



Interim Strategy on section 7 consultations for watercraft access projects in Florida that may indirectly affect the Florida manatee

Frequently Asked Questions

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Q1: What are watercraft access projects?

A1: Watercraft access projects are construction activities for marinas, slips, docks, moorings, ramps, launches, lifts, dry storage facilities and other similar structures that provide increased watercraft access to the waters in and around Florida.

Q2: What Federal regulatory agency authorizes the construction of watercraft access projects?

A2: The U.S. Army Corps of Engineers (Corps) is the Federal agency responsible for permitting the construction of watercraft access projects in waters of the United States.

Q3: What is a section 7 consultation?

A3: Section 7 consultation is the process that a Federal agency must undergo to make sure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7(a)(2) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (ESA), sets out the consultation process, which is further implemented by regulation (50 C.F.R. § 402).

Q4: What is formal section 7 consultation?

A4: Under section 7 of the Endangered Species Act (ESA), if a Federal action [see Q3 above] is likely to adversely affect any listed species or its designated critical habitat, the Federal agency must request the Service to assist it in complying with the ESA, through formal section 7 consultation. During this process the Service biologically evaluates the impacts of the proposed project on the federally listed endangered or threatened species, in this case the Florida manatee. The Service will prepare a report called a “biological opinion.” The biological opinion will include: (1) identification of all impacts to the manatee; (2) whether the impacts will jeopardize the continued existence of the manatee; (3) whether the impacts will destroy areas identified as “critical habitat;” (4) if the project will result in any harm to the manatee; and (5) what actions must be taken to comply with the provisions of the ESA. If a proposed action may affect a listed species or designated critical habitat, formal consultation is required except when the service concurs, in writing,

that a proposed action “is not likely to adversely affect” listed species or designated critical habitat.

Q5: What are direct effects of a watercraft access project on the Florida manatee?

A5: Direct effects are those effects that impact the manatee at the time of project construction only. These effects include the actual construction activities that modify the project site, such as dredging, filling, building construction, dock construction, etc. These effects are addressed at the time of our review of the permit application and are not the focus of this interim strategy. The standard manatee protection construction conditions have been used throughout the range of the manatee for more than a decade and have proven to reduce the direct effects to manatees.

Q6: What are indirect effects of a watercraft access project on the Florida manatee?

A6: Indirect effects are those effects that are caused by or will result from the proposed action and are later in time, but are still reasonably certain to occur. Examples of indirect effects from watercraft access projects are prop dredging of seagrasses and manatee injury or mortality resulting from a collision with watercraft. Such indirect effects have been documented since the collection of manatee mortality data began in 1974. Twenty years ago, there were 65 manatee deaths of which 16 were watercraft-related. In 1999, there were 268 documented manatee deaths of which 82 were watercraft-related, the highest number of watercraft-related mortalities recorded for a single year. In 2000, 76 manatee deaths were watercraft-related. Based on this information, the addition of new watercraft into Florida’s waters will indirectly affect the manatee by increasing watercraft/manatee collisions.

Q7: What is incidental take?

A7: “Take” under the ESA is to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct. This includes, under the definition of “harm,” the significant habitat modification or degradation that results in death or injury to a listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering. It also includes, under the definition of “harass,” actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering.

Incidental take is “take” of listed fish or wildlife species that results from, but is not the purpose of, the proposed, otherwise lawful activity that is considered under the Federal action. “Take” that is not “incidental” are activities like hunting, fishing, collecting, or anything where you want to possess the animal itself.

“Take” under the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361-1407) (MMPA), means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Harassment is defined under the MMPA as any act of

pursuit, torment, or annoyance which: (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Q8: Why does incidental take of the manatee require approval of both the Endangered Species Act and the Marine Mammal Protection Act?

A8: All marine mammals are protected by the MMPA and it includes a procedure, like the section 7 process, for authorizing “incidental take” of marine mammals such as the manatee. However, regulations that allow for “incidental take” of the manatee have not been prepared. The Service cannot exempt “incidental take” for manatees under the ESA, unless authorizing regulations are developed under MMPA. The Service has published in the Federal Register an Advance Notice of Proposed Rulemaking for the development of incidental take regulations for which the “incidental take” of manatees associated with watercraft access facilities may be authorized.

Until the authorizing regulations under the MMPA are finalized, the Service will review all actions to determine if “incidental take” of the manatee is likely to occur. For watercraft access projects which, in our opinion, are likely to result in the “incidental take” of manatees, we will issue biological opinions to the Federal agency. These opinions will state that the project may contribute to “incidental take” of manatees and no “incidental take” is authorized under the ESA or the MMPA.

Q9: What is the interim strategy?

A9: This interim strategy is our guidance to any person or organization regarding conservation measures that could be incorporated into watercraft access facility designs such that, in some cases, projects would not likely cause “incidental take” of the manatee. The manatee guidance is defined as an “interim” strategy because it is designed to provide guidance relating to the indirect effects of watercraft access projects on manatees only during the time period while “incidental take” regulations under MMPA are being developed.

In order for the Service to determine that any such measure is sufficient to reduce the likelihood of “incidental take” associated with the project, the Service must first find that: (1) adequate speed zones exist in the areas reasonably anticipated to have increased watercraft traffic as a result of the project; (2) signage in these areas is adequate to ensure that boaters are aware of the speed zones; (3) speed zone enforcement in these areas is, or with project conservation measures will be, sufficient to prevent watercraft collisions from occurring as a result of the project; and (4) these measures will be in place prior to project implementation.

Q10: What does the manatee guidance do?

A10: The manatee guidance provides assistance to developers, land owners, Federal, State, and local governments in determining appropriate measures for eliminating any project-related effects from watercraft collisions to manatees. The guidance also assists the Service in evaluating requests for letters of concurrence, requests for initiation of consultation, and during formal consultation to identify measures which eliminate the risk of incidental take of manatees. Specifically, the manatee guidance sets the conditions under which we believe that “incidental take,” as a result of watercraft collisions, is unlikely to occur so that a particular project may proceed prior to the issuance of MMPA regulations.

Q11: What does the manatee guidance not do?

A11: The manatee guidance does not authorize incidental take of manatees. Incidental take of manatees without authorization is unlawful and such authorization cannot occur until the Service issues appropriate regulations under the MMPA and a biological opinion under the ESA.

Q12: How does the manatee guidance work?

A12: The manatee guidance sets forth the Service’s findings on the conditions under which the Service could conclude that a proposed watercraft access facility is unlikely to cause take of manatees as well as measures that could be incorporated into the design of a project in order to reduce the likelihood of incidental take to a not likely to occur level. The Service believes that increased manatee speed zone enforcement is the primary conservation measure through which projects could reduce incidental take resulting from watercraft collisions to an unlikely to occur level. The Service believes that in some areas additional law enforcement can be increased to a level which would ensure that an increase in watercraft traffic from a facility will not likely result in incidental take of manatees due to watercraft collisions. Additionally, this increase in law enforcement would provide added benefits to the manatees by ensuring that those watercraft already on the water would also obey the speed zones currently in place.

Q13: Is increased law enforcement the only acceptable conservation measure provided in the manatee guidance?

A13: The Service believes that the best method to reduce indirect manatee mortality is to have adequate enforcement. Generally, the increased enforcement should be in the form of providing increased hours of enforcement officer presence on the water. However, in some limited cases, where the Service finds, based on the best scientific and commercial data available, that factors other than hours on the water limit the effectiveness of enforcement agencies, alternate means of increasing enforcement might be acceptable as conservation measures. Such alternatives might include designating manatee speed zones, improving the signage of existing speed zones, or providing law enforcement equipment.

Q14: What defines the high, medium, and low risk counties/areas/regions for determining an appropriate conservation measure?

A14: The Service has defined high risk areas as those averaging one or more watercraft-related manatee mortalities per year during the past ten years; medium risk areas averaged less than one, but more than zero, watercraft-related manatee mortality per year; and low risk (the remainder of the manatee's range in the southeastern U.S.) had no documented watercraft-related mortality.

Q15: What do I need to do if I am in a high, medium, or low risk county/area/region?

A15: Guidance on developing the necessary conservation measures based on the mortality risk area may be accessed through the Service's South Florida Field Office home page at the following address: http://verobeach.fws.gov/manatee_issues/manatee_guidance.htm

Q16: How does a permit applicant implement a manatee conservation measure?

A16: The permit applicant should review the conservation measures in the interim guidance and the existing conditions in the area of the proposed project. Preliminary discussions with the Corps or the Service may be necessary to identify the best measure to include in the project design. This implementation of the conservation measure can be accomplished by having a signed agreement or contract with a law enforcement entity, by providing funds for law enforcement to an organization that has manatee conservation as a goal, or by implementing an activity that would ensure that the conditions in an area are such that the project does not contribute to the "incidental take" of manatees through watercraft collisions. Law enforcement agents involved in enforcement actions must be authorized to enforce all local, State, and Federal laws, including speed zone restrictions, necessary for the protection of manatees. For further information on signed agreements or contracts with a law enforcement entity (State or County) or for funding law enforcement to a conservation organization (i.e., National Fish and Wildlife Foundation) to implement conservation measures: http://verobeach.fws.gov/manatee_issues/manatee_guidance.htm

Q17: What do you mean by an agreement or contract with a law enforcement entity?

A17: An agreement or a contract is an enforceable document that identifies the parties that are involved in the activity. The document also identifies what actions the law enforcement entity will do, when they will do it, and how they will conduct the law enforcement activities that are required to prevent the "incidental take" of manatees.

Q18: What does such an agreement or contract contain?

A18: The agreement or contract must contain a detailed description of the proposed manatee conservation measure(s). It must also describe how the funding/in-kind resources will be utilized by the law enforcement entity (e.g., how much the funding/in-kind resources will increase the hours of marine patrol unit operation or the amount of fuel and maintenance of marine patrol units to be supplied or the amount and type of equipment to be supplied, etc.) and describe and justify the specific geographic area within which the increased law enforcement will be applied. The agreement or contract must be completed before the

Service makes a final determination on the proposed project to ensure that incidental take of the manatee is unlikely to occur after the project is completed and operational.

Q19: What are the reporting requirements for an agreement?

A19: Reporting details must include, but are not limited to: the number of officers provided, the number of officer hours spent on the water enforcing manatee speed zones, the number of on-the-water public contacts (e.g., citations, warnings) made by law enforcement staff, the number of hours and type of training that officers received on law enforcement related to manatees, the types of equipments and material purchased, the amount of funds expended for material and equipment, the amount of administrative overhead required to implement this agreement/contract, the number of manatees observed by enforcement officers inside and outside of designated speed zones, the number of near misses of manatee-watercraft collisions observed, and the ten-year annual average number of watercraft-related manatee mortalities within one-half mile of the boundaries of the area patrolled by the increased law enforcement prior to and after implementation of increased law enforcement.

Q20: What is the Manatee Conservation Fund?

A20: In April 1999, the Service and the National Fish and Wildlife Foundation signed a Letter of Agreement to establish a Manatee Conservation Fund. The primary purpose of the Fund is to improve manatee speed zone enforcement and awareness in order to modify boater understanding and behavior. A permit applicant, that determines conservation measures are necessary for their project to not likely result in “incidental take” of a manatee, may contribute to this fund rather than prepare an agreement or contract to comply with the interim guidance. It should be noted, however, that permit applicants for watercraft access projects, other than single family applicants, choosing to contribute to a manatee conservation fund must meet certain prerequisites to ensure that incidental take is unlikely to occur as a result of their particular project [see A7 above].

Contributions to the Fund are intended to address effects associated with potential watercraft-manatee collisions. Contributions may be used to fund existing law enforcement officers for overtime and travel; for equipment purchases to maintain law enforcement efforts; to provide training, to evaluate the effectiveness of existing manatee speed zones, and for boater education efforts. The Service will work with State and local agencies to determine the best use of funds to meet responsibilities for manatee conservation and recovery.

Q21: Is the National Fish and Wildlife Foundation the only conservation organization that has an established Manatee Conservation Fund?

A21: Yes, however, the Service is working with the State, counties, and local governments to identify other conservation organizations that participate in and/or fund manatee conservation actions in order to establish a similar program for use by permit applicants.

Q22: Who is responsible for monitoring increased law enforcement activities?

A22: The permit applicant and/or the consultant as well as the law enforcement entity are responsible for collecting, recording, and reporting the increased law enforcement activities to the Service on at least an annual basis.

Q23: What is the long-term conservation strategy for the Florida manatee?

A23: Enforcement continues to be the most effective means of conserving the manatee by reducing adult mortality. However, a larger program than that provided by this interim strategy is necessary to address existing watercraft-related mortality. Such a program has not been developed and the Service is currently working with various entities to accomplish this goal through an “incidental take” regulation under the MMPA. Concurrently, we are working with all partners to ensure speed zone placement and enforcement is both appropriate and adequate.